

REMARKS

Claims 1-10 are presently pending in the application.

New claim 10 is essentially a combination of previous claims 1 and 2, but in a different form which positively recites a mixing and packaging step. Support for new claim 10 may be found, for example, in original claims 1 and 2, as well as in paragraphs [0011], [0012] and [0016] and the specific Examples at paragraphs [0020] and [0021]. Accordingly, no new matter has been added, and entry of claim 10 is respectfully requested.

~~The Examiner has rejected claims 1-9 under 35 U.S.C. § 102(b) as being anticipated by~~ U.S. Patent No. 4,348,292 of Ginn. The Examiner contends that Ginn teaches a detergent system containing two layers, including a surfactant concentrate layer and an aqueous builder concentrate layer, wherein the surfactant concentrate layer comprises, for example, alcohol ethoxylates, isopropanol, perfume, quaternary ammonium surfactants, and water, while the builder concentrate layer contains, for example, 63% water and 37% builder (see example V). The Examiner takes the position that the teaching of Ginn that these detergents are packaged in a bag or packet where the concentrate layers are injected into the bag or the packet (see col. 5, lines 16-19) satisfies the presently claimed features of "keeping the mixtures separate" and "subsequently or substantially simultaneously [filling]." The Examiner further argues that since the concentrates of Ginn are added to water, both concentrates are water soluble or readily dispersible in water (col. 2, lines 33-37), and since the surfactant concentrate layer may have surfactant concentrations of 50%, the concentrate may be 50% water (col. 3, lines 55-58). The Examiner takes the position that this satisfies the "aqueous mixture" feature of the claims. The Examiner concludes that Ginn meets all material limitations of the claims and is therefore an anticipatory reference. This rejection is respectfully but strenuously traversed for the reasons set forth in detail below.

First, Applicants object to the Examiner's reliance upon Ginn at this late stage in the examination of this application. Thus, Ginn was cited in the Information Disclosure Statement filed with this application on December 14, 2001, based upon its citation in the International Search Report from the parent PCT application. However, in that Search Report Ginn was cited

only as Category A (Technological Background). Moreover, while considered by the prior Examiner (Lorna M. Douyon), Ginn was not applied against any of the claims, evidently because Examiner Douyon did not interpret Ginn in the same manner as interpreted in the present rejection. Patent Office procedure requires that the Examiner give full faith and credit to prior interpretation of the prior art by previous Examiners (see MPEP § 706.04). Therefore, Ginn should not now be applied against the present claims, which are no broader than the claims previously considered by Examiner Douyon.

Nevertheless, Applicants will respond hereinafter to the specific rejection based upon Ginn. First, Applicants strenuously disagree with the Examiner's position that Ginn's teaching of injecting the concentrate layers into the bag or packet (col. 5, lines 16-19) satisfies the requirement of keeping the mixtures separate and subsequently or substantially simultaneously filling the package for the composition. The cited statement of Ginn says absolutely nothing about when or how the concentrate layers are injected into the bag or packet. It simply says that they "can be injected" and nothing more. The Examiner's extrapolation of this statement to mean that the layers are kept separate or that they are subsequently or substantially simultaneously injected is totally unwarranted and pure hindsight. Therefore, any rejection based upon this unwarranted assumption must be withdrawn.

Second, the Examiner's conclusion that the surfactant concentrate layer may be 50% water based upon the teaching that the surfactant concentrate layer may have surfactant concentration of 50% (col. 3, lines 55-58) is also unwarranted, because the Examiner has ignored the fact that the surfactant concentrate layer may contain many other ingredients besides surfactant and water. In fact, Ginn teaches (col. 2, lines 19-25) that the surfactant concentrate portion will usually contain less than 10%, usually 4 or 5%, and in some cases no added water. The reason for this is explained in col. 1, lines 11-53, which discusses the problem to which the invention of Ginn is directed, namely eliminating the need for cosolubilizing agents which are required in prior art formulations containing large amounts of water.

In contrast to the presently claimed invention (see, for example, claim 3 in which water is the main ingredient in both first and second preliminary mixtures) where the preliminary mixtures and resulting separate phases may both be aqueous and contain significant amounts of

water, the concentrate layers of Ginn, particularly the surfactant concentrate layer, avoid excessive amounts of water (note also that Examples I, II and IV of Ginn contain no water at all in the surfactant concentrate layer, and Examples III and V both contain less than 10% water). Applicants concede that Ginn discloses the possibility of using aqueous mixtures for both layers, but Ginn certainly does not teach that water can be the main ingredient for both mixtures, as claimed in present claims 3-8. Therefore, the Examiner's reliance on Ginn with respect to these claims is clearly improper and should be withdrawn.

Further, Ginn does not teach a "ready-to-use" packaged composition in the sense of the presently claimed invention. Thus, it is clear from Ginn that the packaged concentrate layers must first be diluted with about 30 to 500 parts of water per 1 part of concentrate in order to produce a stable ready-to-use solution (see col. 5, lines 1-8; col. 2, lines 13-19; and col. 4, lines 12-18). In contrast, no dilution or addition of water is necessary to produce the ready-to-use packaged compositions of the presently claimed invention, since substantial portions of water are already present, and the separate aqueous phases are already in equilibrium. Hence, for this reason also Ginn does not teach or suggest every feature of the presently claimed invention.

Finally, with respect to claims 2 and 10, Ginn does not teach that the compositions of each of the preliminary mixtures is different from the compositions of each of the separate aqueous phases in the end product in rest condition. Thus, as demonstrated, for example, in the Tables in Examples I and II at pages 5 and 6 of the present specification, there is a significant shift of ingredients from the separate preliminary mixtures to the separate aqueous phases after mixture. This is part of the reason that the preliminary mixtures must be kept separate until immediately prior to or upon filling of the mixtures into a packaging container. There is no such requirement or teaching in Ginn. Instead, the ingredients in each concentrate layer of Ginn apparently remain separate, without transfer until dilution with large volumes of water to form the ready-to-use solution. Accordingly, for this additional reason claims 2 and 10 are further distinguishable from Ginn, and reconsideration and withdrawal of the rejection of these claims are also respectfully requested.

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In view of the above Remarks, Applicants respectfully submit that all of the pending claims 1-10 are patentable over the cited prior art and in condition for allowance. A Notice of Allowance is respectfully requested.

In view of the long prosecution of this application, in the event that the Examiner feels that any additional amendments are necessary to place this application in condition for allowance, the Examiner is requested to telephone the undersigned to discuss such amendments before issuing a further action.

Respectfully submitted,

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(Date)

By:



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Enclosure: Petition for Extension of Time (one month)